

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
FCC Process Reform)	GN Docket No. 14-25

**COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

In a follow-up to an informal process to improve the Federal Communications Commission (FCC or Commission) procedural rules,¹ and as a response to a Report on that process,² the FCC has formally asked for comments on the recommendations in the Report.³ The National Association of State Utility Consumer Advocates (NASUCA)⁴ submits the following comments.

The Commission states:

The Report seeks to further the goal of having the agency operate in the most effective, efficient and transparent way possible. It examines the agency's internal operations with the aim of improving the overall functioning of the

¹ See <http://www.fcc.gov/blog/call-input-improving-government-efficiency-fcc>.

² http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0214/DA-14-199A2.pdf. The Report was prepared by an FCC staff working group led by Diane Cornell, Special Counsel to Chairman Tom Wheeler.

³ See DA 14-199 (rel. February 14, 2014).

⁴ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

agency and its service to the public. Based on both internal and external suggestions for process reform, the Report identifies initial steps in what will be an ongoing process of reexamining, and revising, the way the Commission does its work. The Report proposes more than 150 process reform recommendations covering a wide range of specific topics. These recommendations, if implemented, would enable the Commission to work faster, smarter, more efficiently, more transparently, and more inclusively.⁵

How could anyone oppose measures to “enable the Commission to work faster, smarter, more efficiently, more transparently, and more inclusively”? Surely some will, however.⁶

As the Commission further states,

The Report includes recommendations to advance the following goals:

- Improving the efficiency and effectiveness of the FCC’s decision-making process by streamlining the internal FCC review process, improving tracking accountability, and reducing backlogs;
- Processing items before the agency more quickly and more transparently by accelerating the overall speed of disposal of both routine and more complex matters, and ensuring the public is provided more information regarding the status of particular matters;
- Streamlining agency processes and data collections, including reworking essential processes such as licensing activities, internal distribution and release procedures, handling of informal consumer complaints, compliance with statutory requirements such as the Paperwork Reduction Act, and examining the FCC’s data collection practices to lessen burdens where possible, while ensuring the agency’s data collection practices are effectively tailored to evolving market conditions;
- Eliminating or streamlining outdated rules that are candidates for modification or elimination as a result of marketplace or technology changes that render the rules no longer necessary in the public interest;
- Improving interactions with external stakeholders by enhancing the FCC’s public outreach and transparency, exploring innovative mechanisms for developing policy proposals, and updating the drafting process for policy documents;
- Maximizing the Commission’s tools and resources by ensuring effective internal communications, human resource management, and training; and
- Modernizing the Commission’s information technology infrastructure to improve its website functionality, data management, and tracking capability.⁷

These goals are laudable. But, as the adages go, “the proof is in the pudding” and “the

⁵ DA 14-199.

⁶ NASUCA submitted informal remarks, as requested by the Cornell Working Group.

⁷ Id.

devil is in the details.” There are over 150 recommendations in the report,⁸ so these comments do not encompass all of them. NASUCA’s focus here is on particular sub-headings of the Report, being Chapter 1, **Increasing the Speed & Transparency of FCC Decision-making**; Chapter 2, Part C, **Informal Consumer Complaints**; Chapter 3, **Rethink the FCC’s Policy & Rulemaking Process**; and Chapter 5, **Functional & Bureau/Office-Specific Recommendations**.⁹

Chapter 1: Increasing the Speed & Transparency of FCC Decision-making

In Chapter 1 of the Report, NASUCA particularly supports Recommendations 1.3-1.10 and 1.21.¹⁰ These will result in increased transparency, and increase the ability of a larger population to weigh in on FCC issues, many of which are crucial in consumers’ daily lives. On the other hand, Recommendation 1.18 and 1.22, which propose to expand the categories of matters that qualify for streamlined treatment and summary disposition, may risk decreased access to Commission proceedings.¹¹

Recommendation 1.24, which would encourage outside parties to submit proposed language for FCC orders, is especially problematic.¹² The reference to the way such matters are routinely handled “in court” misses a determinative point: The courts handle disputes between parties, and are limited in their judgments to the interests of those parties. The Commission, on

⁸ Id.

⁹ DA 14-199 provided no specific reply comment opportunity, but designated this proceeding as “permit but disclose,” allowing ex parte communications outside the comment window.

¹⁰ NASUCA expresses no views at this point on Recommendations 1.1, 1.2 1.11-1.17, 1.19, 1.20, 1.23 and 1.25.

¹¹ In its informal remarks, NASUCA proposed, based on experiences, was that the Commission adopt a “shot-clock” of 180 days for acting on Petitions for Reconsideration. This places a deadline on Commission action at a final stage of a proceeding. The absence of a deadline constrains the appellate rights of Commission stakeholders. NASUCA stands by its proposal.

¹² See also Recommendation 3.2.

the other hand, must always rule, on all cases, by considering the **public** interest.

Chapter 2, Part C, Informal Consumer Complaints¹³

NASUCA supports the expeditious and effective treatment of complaints (Recommendations 2.14, 2.16-2.18). But the proposed “refocus” of FCC complaint- handling-in Recommendation 2.15 – moving the FCC from being at least a mediator or an advocate on behalf of the aggrieved consumer to being only a bean-counter and proponent of larger policy goals is not justified., Even if it makes FCC complaint handling more efficient, it will be significantly less effective. Thus NASUCA opposes this Recommendation.

Recommendation 2.20 seeks to automate the processing of complaints, and 2.21 seeks to improve responses to complaints. Automation will improve efficiency. But **effective** response to complaints requires some degree of human intervention and interface. Consumers should not be faced with a “**submit your form NOW**” environment; neither should consumers be forced to communicate with the Federal **Communications** Commission only through an Internet medium.

Recommendation 2.22 seeks to improve the Commission’s tracking of complaint data¹⁴ and 2.23 aims to make this data more accessible to the public. NASUCA strongly supports both Recommendations.

CHAPTER 3: Rethink the FCC’s policy and rulemaking process¹⁵

NASUCA’s main participation at the FCC is in rulemakings and other policy proceedings. As a volunteer organization with limited resources, NASUCA greatly appreciates

¹³ Without further comment, NASUCA supports Recommendations 2.1, 2.4, 2.5, 2.31, and 2.33-2.36, and has no position at this time on Recommendations 2.3, 2.6, 2.8-2.13, and 2.24-2.30.

¹⁴ Regardless of any refocus under Recommendation 2.15.

¹⁵ NASUCA takes no position on Recommendation 3.6, 3.11 and 3.15.

the Commission's processes that increase accessibility for those in the hinterlands, broadening access beyond the Beltway. For example, electronic filing and the ability to access other electronic filings and Commission documents is vital for NASUCA to bring the national consumer advocate voice to the FCC's proceedings.

That said, there are some Recommendations in Chapter 3 that raise concerns. These are driven by NASUCA members' experiences in state proceedings. For example, Recommendations 3.1 and 3.1.1, seeking to identify multistakeholder groups, and 3.2, seeking to refine the focus of the Commission's advisory committees, are laudable but risk overlooking stakeholders that lack the resources to participate in such groups. More importantly, Recommendation 3.1.2 and 3.3, which address what can generally be called "alternative dispute resolution" (ADR) proposals, bring to mind NASUCA members' disappointments in state-level ADR. A negotiated rulemaking, in particular, would put burdens on those without relevant resources near D.C.

Recommendation 3.5, proposing to increase access to external technical experts, could be valuable as long as the process is transparent and open. (Recommendation 3.14, proposing to involve FCC experts early in proceedings, makes eminent sense.) Likewise, Recommendation 3.7, the second part of Recommendation 3.8 (having rules earlier in the FCC decisional process), and Recommendation 3.11 (performance measures), seemingly only internal issues, in fact have serious implications for the openness of Commission decision-making.

The first part of Recommendation 3.8 would seek to include draft rules in Notices of Proposed Rulemaking (NPRMs). NASUCA strongly supports such an intention for NPRMs.¹⁶ NASUCA also supports listing questions with rebuttable presumptions in NPRMs, per

¹⁶ Not to mention being consistent with the APA.

Recommendation 3.12, and having focused comments in large dockets (Recommendation 3.13).

Recommendation 3.9 proposes “shorter decisional documents.” FCC decisions must include adequate discussion of the law and the record. The FCC could make its decisions shorter, however, if the Commission took “smaller bites” in its orders, rather than attempting global discussion and decision.

NASUCA strongly supports Recommendation 3.10 to adopt minimum comment periods for “significant regulatory actions.” It is important to note that, for a widespread organization like NASUCA, a reply comment period of only ten days – regardless of the importance of the proceeding – places a tremendous strain on resources.¹⁷

Chapter 5: Functional & Bureau/Office-Specific Recommendations¹⁸

NASUCA strongly opposes Recommendation 5.42, which would allow items to be filed as confidential and treated as such without a specific request from the filer. This particular change should not be adopted: It is against the law,¹⁹ and contrary to public policy. These are things that a search for efficiency cannot ignore.

NASUCA supports Recommendation 5.27 to update FCC forfeiture amounts, and Recommendation 5.45, for work on updating the Commission’s enforcement powers. Things need to be updated, including things like separations.²⁰ NASUCA also supports Recommendation 5.44, which would require FCC filings to identify the real parties in interest.

¹⁷ Even if the issue has been seemingly beaten to death, as with the Commission’s latest iteration of the separations freeze. See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 14-27 (rel. March 27, 2014).

¹⁸ NASUCA takes no position at this time on Recommendation 5.1-5.26, 5.28-5.36, 5.40-41, 5.43, and 5.46-5.49. NASUCA also takes no position on Recommendation 4.1-4.27.

¹⁹ The Electronic Filing Comment System advises that filings are public. The current procedures where a party must claim confidentiality and the issuance of appropriate protective orders should not be changed.

²⁰ See footnote 17.

NASUCA consistently discloses its interests, as seen in footnote 4, *supra*.

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